

# DECEASED ESTATES TRAINING WORKSHOP

20 May 2011  
09h00 – 12h30



**Arnold Shapiro**



**ESTATE FROZEN  
(BUT SEE  
SECTIONS 11 & 12)**

**SIX MONTHS OR SUCH  
EXTENDED PERIOD  
REGULATION 6**



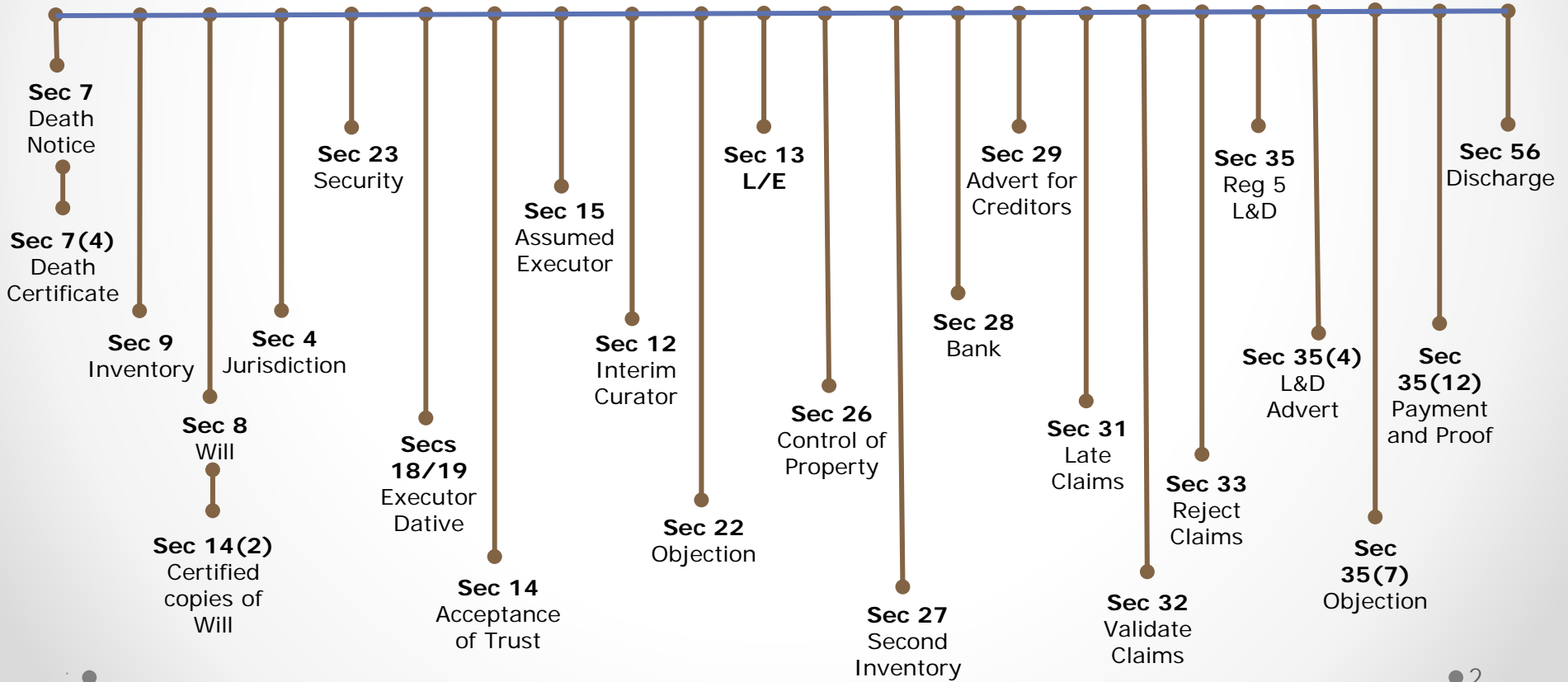
**DEATH**  
Deceased leaves  
property or Will in  
the Republic

**REPORT  
ESTATE**  
(Section 4)

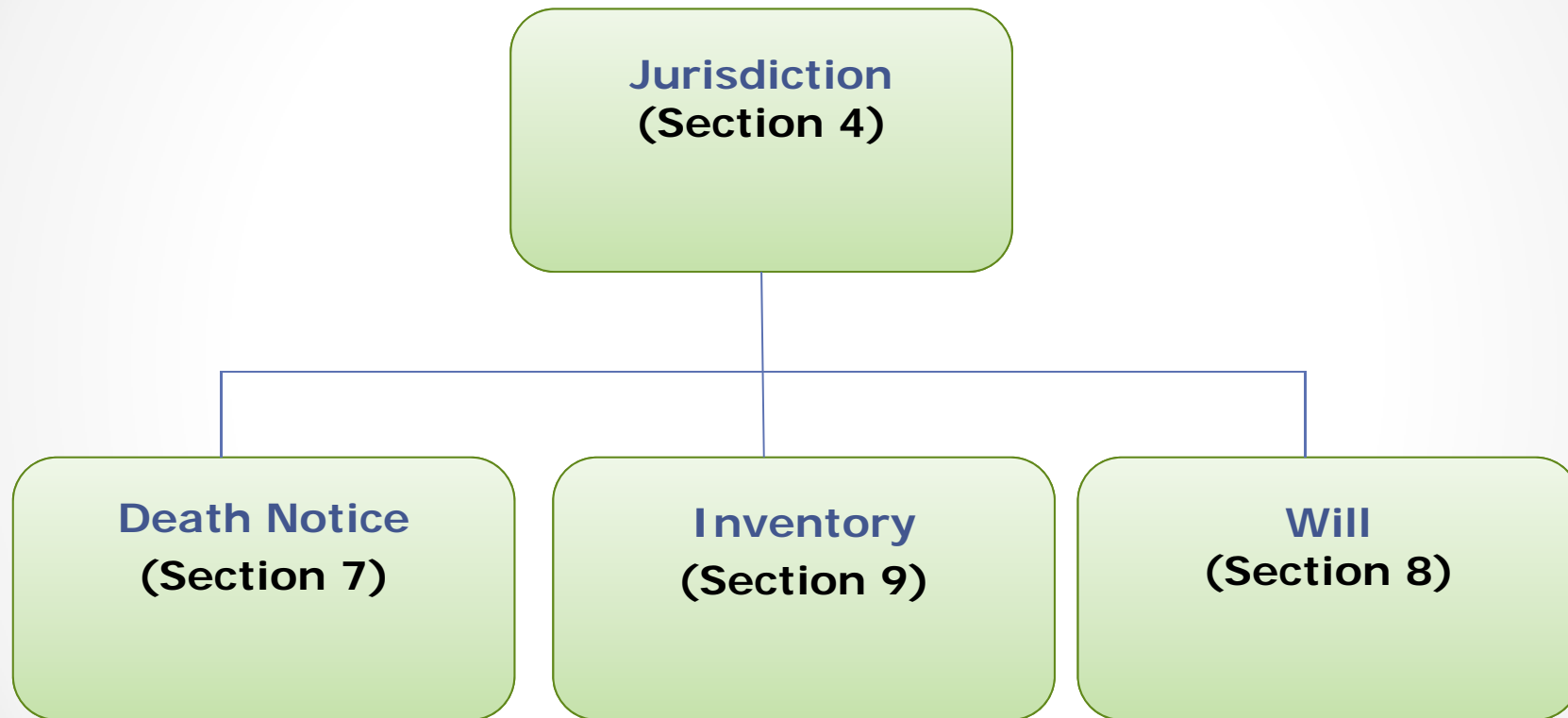
**LETTERS OF  
EXECUTORSHIP**  
(Section 13)

**L&D  
ACCOUNT**  
(Section 35)

**DISCHARGE**  
(Section 56)



## REPORT ESTATE





REPUBLIC OF SOUTH AFRICA

DEATH NOTICE

(In terms of Section 7 of the Administration of Estates Act, 1965)

1. Surname of deceased .....

2. Full first names .....

3. Identity number ..... 4. Population group .....

5. Nationality ..... 6. Occupation .....

7. Ordinary place(s) of residence during the 12 months prior to death and the Province(s) .....

8. Date of birth. .... 9. Place of birth .....

10. Date of death .....

11. Has the deceased left a will? ..... 12. Marital status at time of death .....

13. If married, place where married. ....

14. Full names of surviving spouse and his/her occupation .....

15. State whether marriage was in or out of community of property/whether accrual system is applicable. ....

(a) Name(s) of predeceased spouse(s) and/or divorced spouse(s) (state opposite name of each whether predeceased or divorced) .....

(b) Date of death of predeceased spouse(s) .....

16. Master's office(s) where predeceased's estate(s) is/are registered and number(s) of estate(s), if available .....

17. Full names of children of deceased (state whether major or minor or predeceased and in the latter event, whether they left issue and, if that be the case, the full names of such issue) .....

18. Names of parents of deceased (state whether parents alive or deceased):

(a) Father .....

(b) Mother .....

19. Name and address of person signing the death notice .....

20. \*Capacity .....

21. (a) Was the signatory present at the deceased's death? .....

(b) If the answer to the previous question is no, did the signatory identify the deceased after his death? .....

Dated at ..... the ..... day of ..... in the year .....

Print Name

Signature

\* State whether signatory is surviving spouse, nearest blood relative or connection residing in the district in which death has taken place; or is caused by such spouse, blood relative or connection to give this notice; or is required by the Master to submit this death notice.

If the answer to both questions is no, a death certificate or a certified copy must be submitted herewith.



**INVENTORY**

In terms of Section \*9 (1) (a)/9 (2) (a)/9 (2) (b)/27/78 of the Administration of Estates Act, 1965.

Attention is directed to the provisions of Section 102 (1) (b) of the Act which provides that any person who wilfully makes any false inventory under the Act shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

\* Full name of deceased .....

Full name of surviving spouse (in a case where spouses were married in community of property)

Address of surviving spouse

Massed estate of .....

of/or

\* Full name(s) of minor(s) under tutorship or person in respect of whose property letters of curatorship have been granted:

Full address .....

I(full name) .....

of (full address) .....

in my capacity as.....

hereby declare that to the best of my knowledge and belief the with-in mentioned is a true and correct inventory—

\* (a) of all property known to me to have belonged, at the time of death, to the *\*above-named deceased/joint estate of the above-named deceased and surviving spouse/above-named massed estate*;

\* (b) of all property known to me to have been in the possession of the above-named deceased upon the premises at .....at the time of *\*his/her* death;

\* (c) showing the value of all property in the above-named estate;

\* (d) of all the property taken care of or administered by me.

*Place Date Signature*

*Print Name and Surname*

Names and addresses of persons having an interest in the estate as heirs in whose presence this inventory was made. (To be furnished in the case of an inventory under Section 9 of the Act):

.....  
.....

• *Delete which is not applicable*





3. Claims in favour of estate

Description	Value	
	R	c
<b>Total ..... R</b>		
<b>SUMMARY</b>		
1. Immovable property .....	<b>R</b>	<b>c</b>
2. Movable property .....		
3. Claims in favour of the estate.....		





**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

GP-S 81/811521 J192

(81/811521)

**REPUBLIC OF SOUTH AFRICA**

**AFFIDAVIT**

**PARTICULARS OF NEXT-OF-KIN**

I, .....  
of.....

\*do hereby make oath and say/affirm that within is a true and complete statement of the next-of-kin of the deceased, and I make this statement conscientiously, believing the same to be true.

.....  
*Signature Print Name and Surname*  
Signed and \*sworn to/affirmed before me  
at.....  
this..... day of..... in the year.

The deponent has acknowledged that he/she knows and understands the contents of this affidavit and adheres to it.

.....  
*\*Magistrate/Justice of the Peace/Commissioner of Oaths*  
Area for which appointed .....

If appointment is held ex officio, state office held.....  
• Delete if not applicable.

\* Separate affidavits in respect of each predeceased child must be completed.

Names and addresses of the next-of-kin of the late.....  
 who died at..... on .....  
 (Place) (Date)

N.B.: The date of death is to be inserted opposite the name of any deceased relative. Against those degrees of relationship in which the deceased never had any relative, the word "NONE" is to be inserted.

Relatives to be accounted	Names of relatives and degree of relationship
1. Surviving spouse:  2. Children and date of their birth. Also state names of *predeceased children and their dates of death:	
Ignore questions 3, 4 and 5 if the deceased left children or descendants. 3. Father of deceased: Mother of deceased:	
Ignore questions 4 and 5 if the parents are both alive. 4 Brothers and sisters of the deceased. State whether full or half blood, and their addresses and dates of birth. State the name of the step-parent of half brothers and half sisters:	
5. Names of brothers and sisters who are dead, date of deaths, and names, addresses and dates of birth of their children, if any	



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

**NOMINATION TO ACT AS EXECUTOR OR  
MASTER'S REPRESENTATIVE**

Estate late: \_\_\_\_\_

I / We the undersigned hereby nominate/s \_\_\_\_\_  
to act as Executor or Master's representative of the above estate.

Name	Relationship /Capacity	Signature	Date

## DECLARATION OF MARRIAGE

I.....

### Declare as Follows

of (Address) .....

.....

1. The deceased (.....)  
 was well known to me since .....

2. Mark one of the applicable box with an X below:

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

I know that the deceased was a single person and that the deceased did not enter into any Customary Union.

I know that the deceased was a widow/widower/divorced person and that the deceased did not enter into Customary Union after his/her marriage was dissolved

I know that the deceased was a married person and that the deceased never entered into any Customary Union

I know that the deceased was a married person and that the deceased married ..... (number) wives in terms of Customary Union

I know that the deceased entered into civil marriage and that the deceased also entered into ..... (number) Customary Union/s.

### This is all I want to declare

SIGNATURE OF DEPONENT .....

Signed and sworn to/affirmed before me at .....

This ..... Day of ..... in the year.....

.....

Signature of commissioner of oath

● Area for which appointed: .....



**AFFIDAVIT/DECLARATION  
SECTION 22(2)(c)**

I,.....  
am about to apply to the Master of High Court.....  
in the estate of the late .....  
for an appointment as an Executor/Executrix and I hereby affirm/make oath and say:  
that to the best of my knowledge and belief that letters of Executorships/letters of authority in the estate of the late:  
.....  
have not already been granted by any other Master of High Court or Magistrate in the Republic of South Africa.

Signature of Deponent:.....

I certify that before administering the oath/affirmation I have asked the deponent the following questions and wrote his/her answers in his/her presence.

- a. Do you know and understand the contents of the declaration/affidavit?  
Answer:.....
- b. Do you have any objection in taking the prescribed oath/declaration?  
Answer:.....
- c. Do you consider the prescribed oath/declaration as binding on your conscience?  
Answer:.....

I have satisfied myself as to the identity of the deponent  
I certify that the deponent has acknowledged that he/she knows and understands the contents of the declaration.  
The above signature/mark of the deponent is affixed to the declaration/affidavit in my presence.  
Signed and sworn to/affirmed before me at .....

This ..... Day of ..... in the year.....  
.....

Signature of commissioner of oath  
Area for which appointed:.....



REPUBLIC OF SOUTH AFRICA
UNDERTAKING AND ACCEPTANCE OF MASTER'S DIRECTIONS
[SECTION. 18 (3), ACT No. 66 OF 1965]

ESTATE No. ....

1. Estate late .....
(Full names and surname)

died on ..... Identity number [grid]

District where deceased was residing .....

3. Full names of applicant .....

Identity number .....

Full names of applicant .....

Identity number [grid]

Relationship to deceased .....

5. Residential address ..... Postal address .....

Telephone number (Home) ..... - ..... Telephone number (Work) ..... - .....

6. Name and postal address of agent (if applicable) .....

Telephone number ..... - .....

7. I undertake to administer the estate, to pay the debts from the estate assets and to distribute any balance according to the Master's directions in terms of Section 18 (3) of the Estates Act, 1965, and accept that I am bound by any amendment or cancellation of such directions.

8. I undertake that I shall not administer any asset(s) which has/have not been reflected in the Section 9 inventory, and as soon as it becomes known to me that the value of the assets exceed R50 000 to report to the Master this fact. and to return the directions.

9. I confirm that to the best of my knowledge the estate is solvent and undertake to immediately advise the Master when it becomes known to me that the estate is insolvent. That to my knowledge the known liability/ies of the estate is/are as follows:

.....

10. I hereby declare that I am not an unrehabilitated insolvent.

Signed on .....
(Date)

Signature of applicant



J170

**MAGTIGINGSBRIEF  
LETTERS OF AUTHORITY**  
[Artikel 18(3) van die Boedelwet, No, 66 van 1965 (soos gewysig)]  
[Section 18(3) of the Administration of Estates Act, No. 66 of 1965 (as amended)]

**No:**

behoorlik gemagtig word om die bates in die Boedel wyle  
has/have been duly authorized to take control of the assets of the Estate of the late  
Identiteits No:  
Identity No:

wat oorlede is op  
Who died on  
soos in die inventaris by my ingedien, vermeld, onder beheer te neem, die boedelskulde te  
vereffen en eiendomsreg van die restant aan die erfgenaam/erfgename ingevolge die geldende  
Reg oor te drab.  
As reflected in the inventory filed with me, to pay the debts, and to transfer the residue of the  
Estate to the heir/heirs entitled thereto by law.

ASSETS	AMOUNT

**Meester van die Hooggeregshof  
Master of the High Court**

**DATUM STEMPEL  
DATE STAMP**

**PS: Waar vaste eiendom betrokke is, moet in gedagte gehou word dat oordrag daarvan in die Akteskantoor geregistreer moet word. Vuurwapens moet gelisensieer word.  
In cases involving immovable property, it must be borne in mind that transfer thereof must be registered in the Deeds Office. Firearms must be property licenced.**  
J170/\*MSM

# LETTER REPORTING ESTATE SECTION 18(3)



**BY HAND**

**Master of the High Court**

Dear Sir

**ESTATE LATE:  
DATE OF DEATH:**

We wish to report the above estate and enclose:

- Death Notice (Section 7)
- Inventory (Section 9)
- (Original Will) (Section 8)
- Undertaking and Acceptance of Master's Directions
- Nomination as Master's Representative (Section 18(3))
- Next-of-Kin Affidavit
- Affidavit (Section 22(2)(c))
- Declaration of marriage
- Certified copies of the following:
  - Death Certificate (Section 7(4))
  - Marriage Certificate
  - Extracts from identity documents of:
    - Deceased
    - Nominated Master's Representative

The Master is requested to grant the Letters of Authority in favour of the nominated Master's Representative and to let us have same as soon as possible.

Yours faithfully



## MASTER'S FEES

There are **NO** Master's Fees in an estate administered in terms of sec 18(3)

## VALUE OF PROPERTY

### PRICE REALISED

In the case of property disposed of by a purchase and sale which, in the opinion of the Commissioner, is a *bona fide* purchase and sale in the course of the liquidation of the estate of the deceased

### FAIR MARKET VALUE

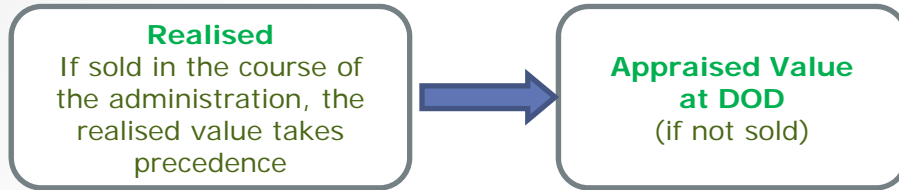
In the case of any other property, the **fair market value** (FMV) of such property as at the date of death of the deceased

FMV – the price which could be obtained upon the sale of the property between a willing buyer and willing seller dealing at arms length in an open market

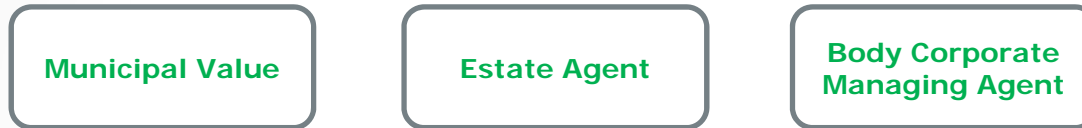
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IMMOVABLE PROPERTY

*FORMAL VALUE*

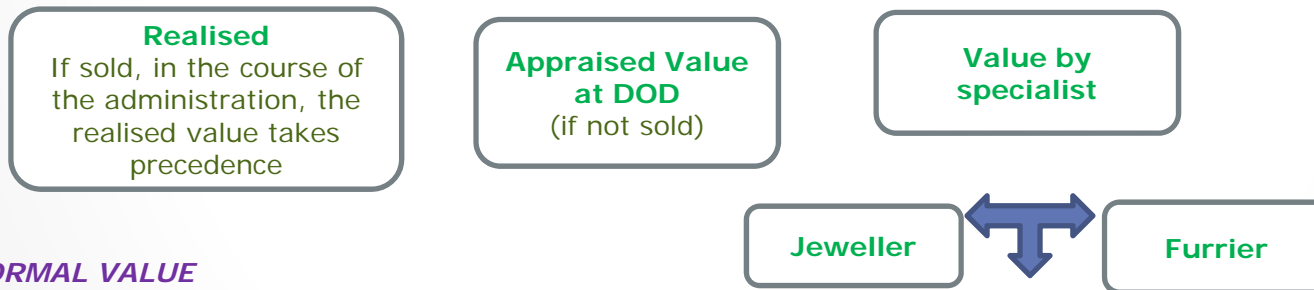


*INFORMAL VALUE*



MOVABLE PROPERTY

*FORMAL VALUE*



*INFORMAL VALUE*



# SPOUSE

There is NO definition of spouse in

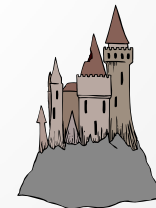
- the Intestate Succession Act
- the Maintenance of Surviving Spouses Act



# SALE OF IMMOVABLE ASSETS IN A SECTION 18(3) ESTATE

## Chief Master's Directive 4 of 2009

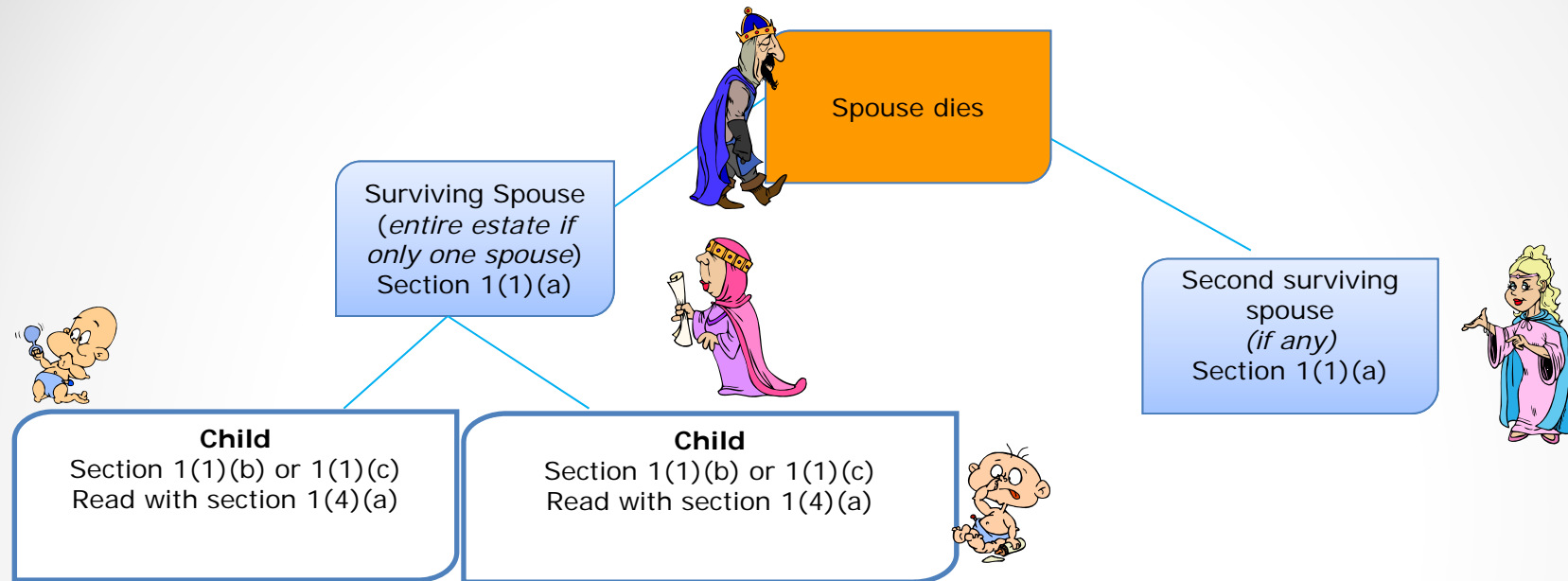
- Masters and the Deeds Office are in agreement that the general letter of authority issued by the Master in terms of section 18(3) **does not** authorize the Master's Representative to sell immovable property
- Therefore, where the Master's Representative wants (needs) to sell the property after having received his/her letter of authority, he/she will have to obtain a further direction from the Master, which authorises the sale of the property
  - The application to the Master and the endorsement will follow the same format as an application for a section 42(2) application. The same form and endorsement must be used – the reference to section 42(2) must merely be changed to section 18(3)
  - If the purchase price (together with the value of the other assets in the estate) does not exceed R125 000, the Master should authorise the sale in terms of section 18(3) as part of the directions which the Master gives
  - If the purchase price is in excess of R125,000, the Master must withdraw the letter of authority in terms of section 18(3) and issue letters of executorship, in which case the sale will require the Master's endorsement in terms of section 42(2)
  - It is important to note that the Master does not need to issue a section 18(3) endorsement where the fixed property is not sold out of the estate but is being transferred to heirs. The reason for this is that the letter of appointment (J.170) already authorises the appointee to transfer the immovable property to the heir/heirs entitled thereto



# INTESTATE SUCCESSION

R125,000.00 estate

## Intestate Succession Act 81 of 1987



<b>Surviving Spouse (Section 1(1)(a))</b>	=	Surviving Spouse inherits R125,000 If more than one Surviving Spouse they share equally (not ex-Spouse)
<b>No Surviving Spouse, surviving descendants (Section 1(1)(b))</b>	=	Estate to descendants by representation <i>per stirpes</i> (Section 1(4)(a))
<b>Surviving Spouse and children (Section 1(1)(c))</b>	=	Surviving Spouse inherits R125,000 or a child's share, whichever is the greater
<b>No Surviving Spouse, no descendants (Section 1(1)(d))</b>	=	Half share to mother and half share to father
<b>If mother or father is predeceased (Section 1(1)(d))</b>	=	That deceased parent's share devolves on the descendants of the deceased parent <i>per stirpes</i> (Section 1(4)(a))

# WILLS

## Wills Act 7 of 1953 ("the Act")



# WILLS

## Who can make a will?

- Anyone who is 16 years of age or older unless at the time of making the Will he is mentally incapable of appreciating the consequence of his actions

**(Section 4)**

## Who can witness a will?

- Anyone who is 14 years of age or older who at the time that he witnesses the Will is not incompetent to give evidence in a court of law
- A beneficiary named in a Will should not sign as a witness, as he may be disqualified from receiving any benefit from the Will

**(Section 4A.(1))**

- **“Benefit”** is not limited nomination as an heir or legatee but includes nomination as executor, trustee or guardian

**(Section 4A.(3))**

# WILLS

## The formal requirements to validate a will

### (Section 2)

- The Will must be in writing - by hand, typed or printed
- The testator **must** sign the Will at the **end** of the Will
- The testator must sign all other pages of the Will anywhere on the page other than the page on which it ends which must be signed at the end of the Will
- The testator must sign the Will in the presence of at least two competent witnesses
- The witnesses (anyone who is not named in the Will), must sign the Will in the presence of the testator and of each other

**(The definition of “sign” includes initials and in the case of a testator, a mark)**



# WILLS

## What if you cannot sign your name?

- You may ask someone to sign the Will on your behalf or you can sign the Will by making a mark (for example a thumbprint or an "X")
- If you make a mark, or get someone to sign on your behalf, the Act provides for a Commissioner of Oaths to certify that he has satisfied himself as to the identity of the testator and that the Will is that of the testator
- The certificate appears anywhere on the Will and save for the page on which the certificate appears all other pages must be signed by the Commissioner of Oaths

# WILLS

## Parties excluded from benefiting

- A witness to a Will or a person who signs the Will on behalf of the testator or a person who writes out the Will or any part thereof in his own handwriting (*manuscript*) and any person who is the spouse of such person at the time of execution may be precluded from receiving any benefit from the Will

**(Section 4A.(1) and (2))**

## The rescue provision

- **Section 2(3)** permits a court to direct the Master to accept a Will or an amendment to a Will which does not comply with the requirements of the Wills Act but which a court is satisfied was drawn by the testator and clearly reflects the testator's intention to be his last Will

# WILLS

## Amendment to Will

- Amendments, in terms of the Act, are:
  - deemed to occur after the date of execution (**Section 2(2)**)  
and
  - constitute a codicil to the Will thus requiring compliance with the full formal requirements of drawing of a Will (**Section 2(1)(b)**)

# WILLS

## Your Will and your divorce

A bequest to your ex-spouse in terms of a Will made before your divorce will not necessarily be revoked after your divorce

- If you die within three months of the dissolution of your marriage your ex-spouse is deemed to have predeceased the date of dissolution, and therefore will not benefit unless the Wills specifically says to the contrary
- If you die more than three months after the dissolution of your marriage, without changing your Will, your ex-spouse will benefit

**(Section 2B.)**

# WILLS

## Renunciation by your descendants

(Section 2C. )

## Interpretation of Wills

- An adopted child is regarded as the blood child of his adoptive parent

(Section 2D.(1)(a))

## Class of beneficiary

- Limited to people in the class alive at the date of death or who have been conceived prior to date of death but are subsequently born alive

(Section 2D.(1)(c))

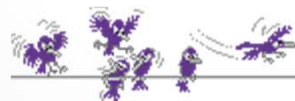
# LEGISLATION

<b>The Constitution of South Africa</b>	
Administration of Estates Act 66 of 1965	
Civil Union Act 17 of 2006	
Estate Duty Act 45 of 1955	
Intestate Succession Act 81 of 1987	
Maintenance of Surviving Spouses Act 27 of 1990	
Recognition of Customary Marriages Act 120 of 1998	
Wills Act 7 of 1953	

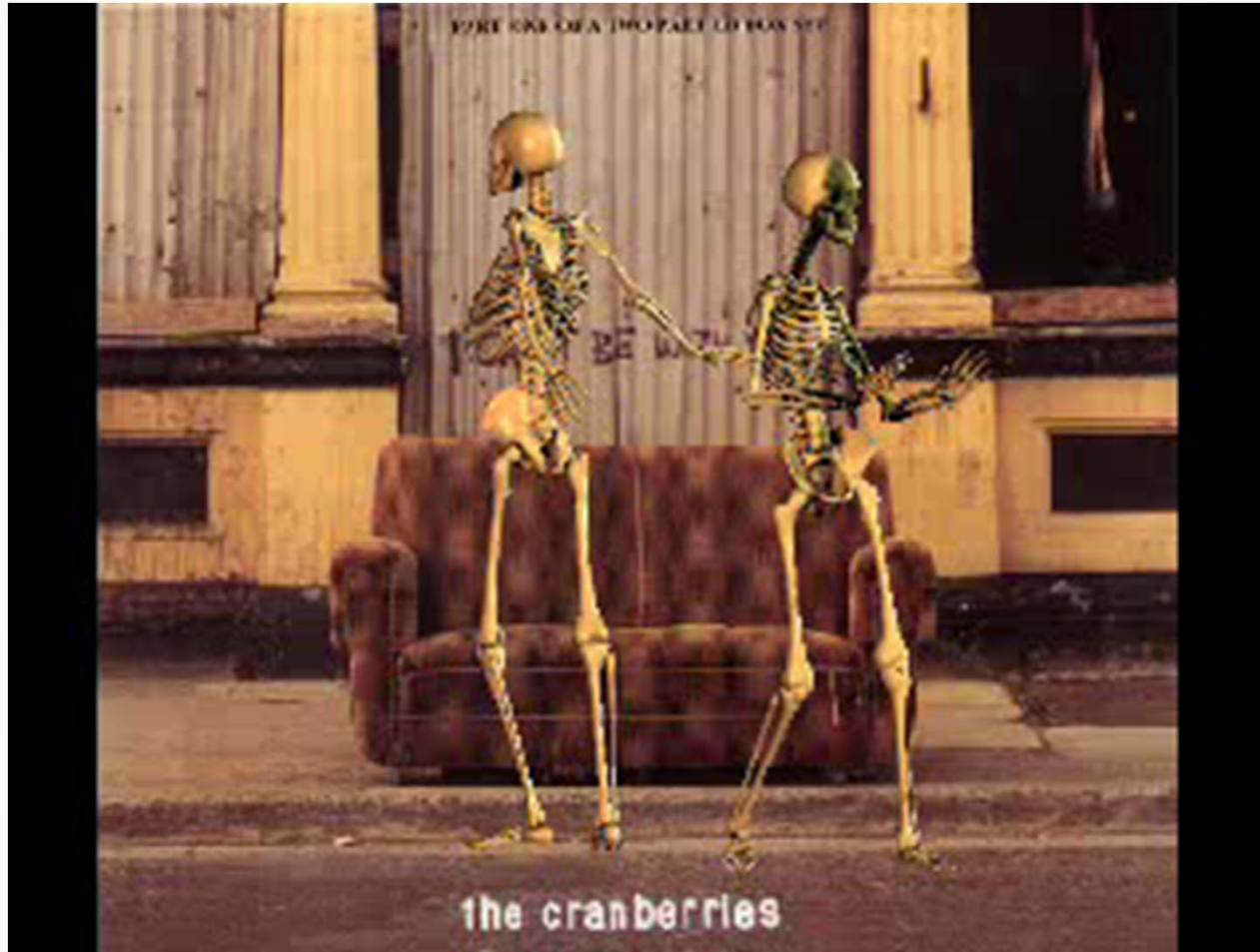


## CASE LAW

<i>Bekker v Naude en Andere</i> 2003 (5) SA 173 (SCA)	
<i>Bhe and Others v Magistrate Khayelitsha and Others</i> 2005 (1) SA 580 (CC)	
<i>Daniels v Campbell NO and Others</i> 2004 (5) SA 331 (CC)	
<i>Gory v Kolver and Others (Starke and others intervening)</i> 2007 (4) SA 97 (CC)	
<i>Govender v Ragavayah NO and Others</i> 2009 (3) SA 178 (D)	
<i>Hassam v Jacobs NO and Others</i> 2009 (5) SA 572 (CC)	
<i>Kidwell v The Master and Another</i> 1983 (1) SA 509 (E)	
<i>Motsaotsoa v Roro and Another</i> 2011 2 All SA 324 (GSJ)	
<i>Volks NO v Robinson and Others</i> 2005 (5) BCLR 446 (CC)	



THANKS



the cranberries





Arnold Shapiro  
**thank you**